85-1556

Supreme Court U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM JOSEPH STEINGRABER,

Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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QUESTION PRESENTED FOR REVIEW

May a search of a pickup truck in Reading, Pennsylvania be considered to occur at the "functional equivalent" of the border of the United States when the evidence tends to show that a plane from which the truck received some sort of cargo at Reading Airport made a landing at Vero Beach, Florida from the Bahamas without clearing Customs and a later landing at Reading but does not show continuous surveillance between those landings?

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OPINIONS BELOW

The opinion of the Superior Court of Pennsylvania is published at 483 A. 2d 895.

STATEMENT OF JURISDICTION

The judgment sought to be reviewed was entered on April 23, 1985; reconsideration was denied December 17, 1985. Your Honorable Court has jurisdiction to review said judgment by writ of certiorari by virtue of the Act of June 25, 1948, c. 646, §1, 62 Stat. 928, 18 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the Fourth Amendment to the United States Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Petitioner, William Steingraber, was convicted, in a jury trial in the Court of Common Pleas of Berks County, Pennsylvania, of possession of marijuana, possession of marijuana with intent to deliver, and criminal conspiracy.

The evidence that convicted petitioner was seized from a pickup truck owned by another person but driven by him in the vicinity of the Reading Airport in Reading, Pennsylvania. The evidence presented at the suppression hearing, recounted in copious detail in the opinion of the trial court and that of the Superior Court, tended to show that an unknown aircraft without the appropriate clearance was observed by a Miami air traffic controller approaching the United States from a location southeast of Bimini and was lost to the radar screen somewhere in the vicinity of Vero Beach, Florida, that a plane reasonably believed to be the same one landed at Vero Beach, that the pilot left the aircraft just long enough to get fuel, oil, and information concerning weather conditions for Reading, Pennsylvania, that the plane took off again notwithstanding Vero Beach police

efforts to detain it for Customs officials, that a Customs aircraft chased it as far as Baltimore, that the Customs aircraft, which stopped to refuel in Baltimore, was advised upon taking off from Baltimore by New York Control that the plane it wanted had landed in Reading, that something was transferred at Reading Airport from the plane to the truck driven by petitioner, that baled packages containing an initially unidentifiable dark substance were observed within the truck by Pennsylvania state troopers who followed it down a road near the airport, and that the substance was ultimately seized and determined to be marijuana. Co-defendant Guinther was the pilot of the plane, and co-defendant Santarelli was petitioner's passenger in the truck.

The issue raised herein was raised initially via application to suppress

evidence, and also raised on post-verdict motions, on petitioner's appeal to the Superior Court of Pennsylvania, which appeal resulted in affirmance of the conviction on October 26, 1984, and in a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, which denied review on April 23, 1985 and refused reconsideration of its decision denying review on December 17, 1985.

REASONS FOR GRANTING THE WRIT

The issue raised herein is whether the Superior Court of Pennsylvania erred in upholding the trial court's determination that "[F]or purposes of this case, Reading was located at the functional equivalent of the border[]", when the point of crossing was in Florida and the initial landing was made there. The doctrine whose application is at issue here was characterized as follows in United States v. McDaniel, 463 F. 2d 129, 131 (5th Cir. 1972):

> This is a case allegedly under the aegis of the "border search" doctrine, whose borders have never been geodetically defined and whose legal undulations are manifold. Transits and other paraphernalia, both legal and paralegal, lead to no certain perimeters. Given precedential latitude and constitutional longitude, we conclude that the search under the spotlight in this case came within the legal confines of a border search and within the constitutional confines of the Fourth Amendment.

It is submitted that the boundaries of the doctrine were transgressed in the instant case. It is acknowledged that probable cause is not required for a border search, and that searches at the border of persons and property crossing into the country are reasonable simply by virtue of the fact that they occur at the border. United States v. Ramsey, 431 U.S. 606, 97 S. Ct. 1972, 52 L. Ed. 2d 617 (1977). It is also acknowledged that an inland location may be the "functional equivalent" of the border; as Your Honorable Court observed in Almeida-Sanchez v. United States, 413 U.S. 266, 273, 93 S. Ct. 2535, 2539, 37 L. Ed. 2d 596, 602-03 (1973):

> [A] search of the passengers and cargo of an airplane arriving at a St. Louis airport after a nonstop flight from Mexico City would clearly be the functional equivalent of a border search.

While petitioner does not contend that the unauthorized takeoff of the suspect plane from Vero Beach in and of itself defeated the right of Customs officers or local law enforcement authorities acting at their direction to search it, the evidence in this case fails to show that the flight from Vero Beach to Reading was nonstop. The Customs officer who piloted the pursuing plane testified as follows on direct examination at the pretrial hearing (pp. 162-63):

> Q. Did you have your aircraft refueled in Baltimore?
>
> A. Yes, sir.
>
> Q. And then what happened?
>
> A. I departed Baltimore. En route to Reading, Pennsylvania, I established radio communications with the New York Center after I was handed off out of Baltimore, and I asked the - - -
>
> MR. BERNHART: I object to that conclusion, after the hand off from Baltimore to New York Center. That's something only the people in New

York and Baltimore could know.

THE COURT: Well, he heard it. It was communicated to him, I assume, wasn't it?

THE WITNESS: Yes, Your Honor. In fact, I participated in it. When you are handed off, you go from one controller to another controller. One controller said this is Baltimore departure control. I am going to switch you to a New York Center controller. Call him up on this frequency, and they assign you a new frequency on your radio. You dial it in, and say New York, this is me, and they say, okay, we have you in radar contact.

BY MR. SUSS:

Q. Is that what took place in this instance?

A. Yes, sir.

Q. Did you have communications with New York Center?

A. Yes, sir.

Q. What information was exchanged between yourself and New York Center?

A. I asked them if they knew where the aircraft was at that time, and he says he had just landed at Reading.

Q. Did you specify what aircraft you were referring to?

A. I did not specify the aircraft. I do not recall specifying what aircraft.

Q. Did you then proceed to Reading?

A. Yes, sir.

While no issue is presently raised with respect to the hearsay nature of this testimony, the testimony establishes only that someone at the New York Center believed the aircraft the officer wanted had landed in Reading. What observations that someone made are nowhere in evidence, and the result is a gap in surveillance between Baltimore and Reading, a gap sufficient to allow for an interim landing elsewhere.

The leading Circuit case on the issue of when an inland search is a legitimate border search is Alexander v. United States, 362 F. 2d 379 (9th Cir. 1966). The Court stated:

> [T]he legality of the search must be tested by a determination whether the totality of the surrounding

> circumstances, including the time and distance elapsed as well as the manner and extent of surveillance, are such as to convince the fact finder with reasonable certainty that any contraband which might be found in or on the vehicle at the time of search was aboard the vehicle at the time of entry into the jurisdiction of the United States. [Id. at 382.]

The Ninth Circuit has also held that the border search doctrine extends to searches of vehicles not believed to have crossed the border, when there is a reasonable certainty that parcels have been transferred to such vehicle from one that has crossed the border. United States v. Weil, 432 F. 2d 1320 (9th Cir. 1970) Petitioner has no quarrel with this proposition and acknowledges that the circumstantial evidence tended to show that something from the plane had been placed in the car he was driving, but submits that the requisite certainty that that something had crossed the border was lacking. The "reasonable certainty"

standard established by Alexander and Weil is a higher standard than that of probable cause: United States v. Kessler, 497 F. 2d 277 (9th Cir. 1974). That standard was not met here. The observation of the Court in United States v. Bowman, 502 F. 2d 1215, 1219 (5th Cir. 1974) is apropos here:

> [T]here comes a point after a border crossing where an individual's relationship with the border is so attenuated that a search may not be justified as a "border search."

With respect to the alternative ground of probable cause, it should suffice to note that the material in the pickup was not visually identified as marijuana until the vehicle had been detained. With respect to the contention that petitioner lacks standing because he did not own the truck, it should suffice to note that while Rakas v. Illinois, 439 U.S. 128, 99 S. Ct. 421,

58 L. Ed. 2d 387 (1978) limited the standing of passengers in vehicles to object to searches thereof, Your Honorable Court refused in Rakas to hold that one must have a common-law property interest in searched premises to object to the search.

In straining the border search rule to allow the search of petitioner's truck in Reading, Pennsylvania, the Pennsylvania courts have sanctioned an egregious departure from the accepted and usual course of judicial proceedings. Review by writ of certiorari is accordingly appropriate and is respectfully requested.

Respectfully submitted,

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